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JOHN T. FEY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 277

DISTRICT OF COLUMBIA,
Petitioner,

v.

FENTON M. FADELEY, RICHARD W. FADELEY, F. MERCER FADELEY, FENTON M. FADELEY, PATRICK A. DECK, CHESTER A. BLINSTON, and DOLORES U. FADELEY,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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BRIEF FOR RESPONDENTS IN OPPOSITION

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OPINIONS BELOW

The findings of facts and the opinions of the District of Columbia Tax Court are not reported in an official reporter, but they may be found in the Record, pp. 94-130 and pp. 151-194, and in Commerce Clearing House, Inheritance Estate and Gift Tax Reporter, paragraphs 18,396 and

18,423. The opinion of the Court of Appeals for the District of Columbia Circuit is reported at 233 F. 2d 667 (C.A.D.C. 1956) and reproduced in Appendix A, pp. 1-7, of the Petition.

JURISDICTION

The judgment of the Court of Appeals was entered on June 7, 1956. The jurisdiction of this Court is being invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the District of Columbia Tax Court deprived the petitioner of property without due process of law by deciding an issue against the petitioner under these circumstances:

(a) The District of Columbia Tax Court based its decisions on an issue that was (i) pleaded generally in the petitions, (ii) presented specifically in the taxpayers' opening statement, (iii) supported by a written partnership agreement introduced by the taxpayers at the hearing without objection by the petitioners, (iv) specifically argued in the taxpayers' brief as an issue of law,

(b) The District of Columbia Tax Court in accordance with its rules of procedure permitted the taxpayers to amend their petitions after the hearing on the merits in order to plead this issue expressly,

(c) The District of Columbia Tax Court did not grant a hearing after the amendment of the petitions, having previously notified the petitioner that the issue involved would be decided on the basis of the partnership agreement,

(d) The petitioner never requested a hearing or rehearing nor indicated that it had evidence to introduce,

(e) The District of Columbia Tax Court made separate findings of fact; its conclusions of law were incor-

porated in its opinions. The opinion of the Court of Appeals for the District of Columbia Circuit shows that Court had a clear understanding of the basis of the Tax Court's decisions.

2. Whether the residuary legatee, having paid the inheritance tax, can appeal under the District of Columbia statute permitting only the aggrieved person who pays the tax to appeal, where his share of the estate was required by the terms of the will to be diminished by the payment of all succession taxes.

STATEMENT

The United States Court of Appeals for the District of Columbia Circuit (hereafter called the Court of Appeals) affirmed the decisions of the District of Columbia Tax Court (hereafter called the Tax Court) in these cases, and ordered refunds of District of Columbia inheritance taxes (Petition Appendix A, pp. 1-7).

As detailed below, four of these cases concern decedent's partnership interests; three of the cases involve only the question as to who can appeal to the Tax Court. The cases were consolidated for hearing before the Tax Court (R. 3).

1. The executors of the decedent's will included in the District of Columbia inheritance tax return the decedent's interests in four partnerships, valuing these interests at $108,117.95. There is no dispute about this item. Under the partnership agreement, on the death of a partner, his estate was entitled only to his capital account balance as shown on the books of the partnership—in this instance the above amount, the result being that any good will continued in the surviving partners. The Assessor for the District of Columbia determined that the decedent's interests in the partnerships, in addition to her interest in the capital account, included good will which he valued at $103,587.68 and taxed it as a testamentary transfer to

the surviving partners (R. 164-168). After paying the taxes thus assessed against them, the partners sought refunds in the Tax Court (R. 135-140).

The petitions filed with the Tax Court contained allegations that the assessments were erroneous and raised the question whether there was a transfer testamentary in character,

> "b. The Assessor of the District of Columbia incorrectly determined that the partnership agreement drawn December 31, 1947, and signed by Ellen H. Fadeley, Fenton M. Fadeley, Dolores U. Fadeley, Chester A. Blinston and Patrick A. Deck, is a testamentary instrument by which Ellen H. Fadeley's partnership interests passed at her death to surviving partners.
>
> "c. The Assessor of the District of Columbia incorrectly determined that on the death of Ellen H. Fadeley there was transferred to Fenton M. Fadeley, Dolores U. Fadeley, Chester A. Blinston and Patrick A. Deck, Ellen H. Fadeley's interest in partnership goodwill." (R. 136.)

Thus the petitioner is in error when he states that the only issue raised in the appeals was the correct value of the interests transferred. (Petition p. 2)

In his opening statement, counsel for the taxpayers contended that, if a transfer of decedent's partnership interest was made (to the surviving partners), it was made for a valuable consideration by or with mutual promises (R. 2, 3). The partnership agreement was introduced without objection from the District (R. 80, 83, 148-150).

The taxpayers on brief argued, among other things, that the decedent had not made taxable transfers, since any transfer that was made to these parties was made for a full consideration in money or money's worth (R. 149-150). In its brief the District did not answer or comment on this argument (R. 148-150).

The Tax Court, because of doubt as to whether the petitions covered or should have covered this position, requested

the parties to file memoranda thereon.[1] Although counsel for the taxpayers was of the opinion that the petitions adequately covered this point (R. 141, 143, 144, 145), a motion was made for leave to amend to include specifically an allegation that, if a transfer was made, it was made for full consideration (R. 148). The District filed a memorandum in opposition to this motion (R. 196). The motion to amend the petitions was granted (R. 149-151).

The District at no time suggested to the Tax Court that it had any evidence to present on this consideration issue and at no time requested a further hearing.

The Tax Court held that the transfer of decedent's partnership interest was made for full consideration because of the reciprocal covenants in the partnership agreement and that the taxpayers were entitled to a refund of the taxes erroneously assessed (R. 151-194). The District did not request a rehearing. On appeal the Court of Appeals affirmed the Tax Court's decisions (Petition Appendix A, pp. 1-7).

2. In the remaining three cases the only question is as to what persons could appeal from a determination by the District of Columbia Assessor that *inter vivos* gifts made by decedent to two of her grandsons were made in contemplation of death (R. 118).

Item I of the decedent's will provided (R. 118):

> "I direct my Executors hereinafter named to pay all of my just debts, funeral expenses without regard to the legal limitation in force in the District of Columbia and succession taxes out of the corpus of my estate." (R. 118.)

Item V of the decedent's will bequeathed and devised the

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[1] "THE COURT: * * *

"The point that I am interested in today is: Whether or not I have a right to consider the point you make that valuable consideration was paid for the transfer.

"Suppose you have a memorandum, and then, when you complete it—let us say within a week—send a copy to Mr. Updegraff and let him answer?" (Tr. in Tax Court, p. 223.)

residue of the decedent's estate to Fenton Fadeley, the decedent's son. The decedent's executors paid the estate residue to Fenton Fadeley, who in turn paid all inheritance taxes, including the taxes assessed against the two grandsons, F. Mercer Fadeley and Richard W. Fadeley (R. 118). Fenton Fadeley's payment of these inheritance taxes reduced the residuary estate received by him. Fenton Fadeley and the two grandsons filed petitions in the Tax Court (R. 119, 132).

The Tax Court held that the transfers were not made in contemplation of death and that Fenton Fadeley was entitled to a refund (R. 132). The Court of Appeals held that Fenton Fadeley was the party entitled to appeal to the Tax Court under D. C. Code, Section 47-2403 (1951) and affirmed the decision as to contemplation of death (Petition Appendix A, p. 4).

REASONS FOR DENYING THE WRIT

The decisions of the Court of Appeals do not conflict with any decision of this Court, the Court of Appeals, or any other federal court, and they are correct. The petitioner's assertion that it has been deprived of property without due process is erroneous. These cases do not involve an important question of federal or local law, but merely concern the application of the District of Columbia Inheritance Tax statute to certain covenants in a partnership agreement and the question as to what parties are entitled to appeal from an erroneous assessment.

1. The decisions of the Court of Appeals affirming the District of Columbia Tax Court do not conflict with any decision of this Court, the Court of Appeals, or any other federal court. On the contrary, the decisions as to the consideration issue are in accord with *Broderick v. Gore*, 224 F. 2d 892 (C.A. 10 1955); *Wilson v. Bowers*, 57 F. 2d 682 (C.A. 2 1932); *Edith M. Benzel*, 36 B.T.A. 246 (1937); and *Estate of Lionel Weil*, 22 T.C. 1267 (1954). This agreement among the views of the Tax Court of the United States,

the Courts of Appeals for the Second and Tenth Circuits, lends support to the view that the Court of Appeals for the District of Columbia correctly decided these cases.

2. The petitioner's assertion that it was deprived of property without due process of law is erroneous. An examination of the proceedings before the Tax Court indicates why the Court of Appeals deemed it unnecessary to discuss the cases in a constitutional context. A summary of the Tax Court proceedings, with citations to the Record, is set forth in the statement at pp. 4 and 5 herein, and it indicates that the petitioner was given a fair hearing with opportunity to present any evidence or argument that it desired.

The original petitions alleged that the Assessor's determination was incorrect in treating as testamentary any transfer of good will. The respondents' opening statement expressly explained that respondents were not contesting the Assessor's computation as to good will but were seeking a refund of tax on the ground, among others, that, if a transfer of decedent's interest in the partnership good will occurred, it was for a valuable consideration by or with mutual promises in the partnership agreement. The issue was further argued in the taxpayers' brief. The petitioner chose to ignore this issue throughout the trial. Petitioner never suggested to the Tax Court that it had any evidence on this issue, nor did it ever request the Tax Court to grant it a further hearing nor, after the decision, did it request a rehearing. The decision on this issue involved a question of law based on the terms of the partnership agreement. See *Broderick v. Gore, supra* at p. 897.

Thus, it seems clear that petitioner was afforded full opportunity to present anything it had to say on this issue.

3. These cases do not involve an important question of federal or local law, but merely concern the application of the District of Columbia Inheritance Tax statute to certain covenants in a partnership agreement and the question as to the proper party to maintain the suit for refund.

In support of its argument that these are important cases, the petitioner cites (Petition p. 13) *District of Columbia v. Pace*, 320 U.S. 698 (1944). That case was important; it involved the scope of review of the Tax Court's findings of fact and specifically whether finality of the Tax Court's findings is to be determined by the rules governing review of the findings of an equity court or the findings of a jury. An issue of comparable importance in the administration of the local tax statutes is not present in this case.

The District of Columbia Tax Court, which is charged with the responsibility of deciding cases arising under the local tax statutes, fully considered and correctly disposed of the issues involved in these cases. The Court of Appeals for the District of Columbia affirmed the Tax Court decisions.

4. The Court of Appeals properly disposed of the petitioner's argument regarding the form of the Tax Court's findings of fact, conclusions of law, and opinion. The law is well settled in the District of Columbia that "it is enough that the findings taken together give us 'a clear understanding of the basis of the decision.'" *Minnesota Mining & Manufacturing Co. v. Coe*, 125 F. 2d 198, 199 (C.A. D.C. 1941); and see *Shellman v. Shellman*, 95 F. 2d 108 (C.A. D.C. 1938).

The District contends (Petition pp. 19, 20) that it was deprived of due process because the Tax Court did not "make the requisite findings of fact and conclusions of law on such issue" as required by the District of Columbia Code Section 47-2403 (Petition pp. 3, 5, 6). The District suffered no deprivation, since the Tax Court's opinion clearly set out the facts and law points involved in the decision, and since the form of the Tax Court's findings of fact and opinion was in accordance with Tax Court Rule 34 (Petition p. 8), which was adopted pursuant to the District of Columbia Code, Section 47-2408 (Petition p. 6). Also see *Goodacre v. Panagopolous*, 110 F. 2d 716 (C.A. D.C. 1940), and *Green*

Valley Creamery, Inc., v. United States, 108 F. 2d 342 (C.A. 1 1939).

In conclusion, the taxpayers submit that the District's argument regarding the form of the Tax Court's findings and conclusions is of slight significance and was correctly dealt with by the Court of Appeals.

5. The Court of Appeals correctly held that the Tax Court had jurisdiction of the three cases involving the contemplation of death issue (Petition Appendix A, p. 4). The Court of Appeal's holdings were in accord with its earlier decision, *National Bank of Washington v. District of Columbia,* 226 F. 2d 759 (C.A. D.C. 1953). The decision of the Court of Appeals, adverse to the petitioner, arrives at a result which Congress must have intended; otherwise no one could have brought this suit.

CONCLUSION

For the reasons stated, the respondents respectfully submit that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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